



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 11, 2022


United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT
ELLINGTON; ISAAC LEVENTON; GRANT JAMES
SCOTT III; FRANK WATERHOUSE; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF

Chapter 11

Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

**ORDER APPROVING STIPULATION REGARDING DEFENDANTS’ MOTIONS TO
WITHDRAW THE REFERENCE**

Upon consideration of the *Stipulation Regarding Defendants’ Motions to Withdraw the Reference* [Docket No. 65] (the “Stipulation”),² by and among Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Litigation Trustee”), and the Defendants (together with the Litigation Trustee, the “Parties”), it is **HEREBY ORDERED THAT:**

1. This Stipulation, a copy of which is attached hereto as **Exhibit A**, is **APPROVED**.
2. The Stipulation shall become effective immediately upon entry of this Order.
3. The Parties shall adhere to the following deadlines with regard to the Motions to Withdraw, as set forth in the Stipulation:
 - a. Any Motions to Withdraw that have not yet been filed shall be filed no later than February 1, 2022;

² Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Stipulation.

b. The Litigation Trustee's response to the Motions to Withdraw shall be filed no later than 12:00 p.m. Central Time on March 4, 2022;

c. Movants' reply briefs in support of the Motions to Withdraw shall be filed no later than 12:00 p.m. Central Time on March 14, 2022;

d. The status conference on all Motions to Withdraw provided for by Local Rule 5011-1(a) shall be held by this Court on March 17, 2022 at 9:30 a.m. Central Time, and each movant will file a notice of hearing reflecting that date, if such notice has not yet been filed;

e. Any further proceedings on the Motions to Withdraw (if any) shall be scheduled as the Court provides; and

f. All remaining deadlines in the Initial Response & Briefing Schedule [Docket No. 20] and the Scheduling Order [Docket No. 23] shall be extended by 30 days, as reflected in the proposed amended scheduling order attached hereto as **Exhibit B**.

4. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of the Stipulation and this Order.

###End of Order###

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

Adv. Pro. No. 21-03076-sgj

STIPULATION

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**STIPULATION REGARDING DEFENDANTS' MOTIONS TO WITHDRAW THE
REFERENCE**

This stipulation (the “Stipulation”) is made and entered into, subject to Court approval, in the above-captioned adversary proceeding (the “Adversary Proceeding”) by and among Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Litigation Trustee”), and the Defendants (“Defendants” and together with the Litigation Trustee, the “Parties”),² by and through their respective undersigned counsel.³ In support of the Stipulation, the Parties respectfully state as follows:

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (“HCMLP”), filed a voluntary petition for relief under title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11;

WHEREAS, on October 15, 2021, the Litigation Trustee commenced the Adversary Proceeding by filing a complaint [Docket No. 1] (the “Complaint”);

WHEREAS, on November 16, 2021, the Parties entered into the Initial Response & Briefing Schedule [Docket No. 20], which was approved by the Court on December 17, 2021 [Docket No. 23];

² “Defendants” includes all defendants set forth in the case caption, except for SAS Asset Recovery, Ltd. Defendants who have filed motions to withdraw the reference include: Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC (the “Former Employee Defendants”); Mark A. Okada (“Okada”), The Mark & Pamela Okada Family Trust – Exempt Trust #1 (“MPO Trust 1”) and Lawrence Tonomura in his Capacity as Trustee, and The Mark & Pamela Okada Family Trust – Exempt Trust #2 (“MPO Trust 2”) and Lawrence Tonomura in his Capacity as Trustee (collectively, the “Okada Defendants”); NexPoint Advisors L.P. (“NPA”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”); James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (collectively, the “Dondero Defendants”); Grant James Scott III; and CLO Holdco, Ltd., Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, and Charitable DAF Holdco, Ltd. (the “CLO Holdco-Related Defendants”).

³ This Stipulation is entered into without waiver of each Defendant’s right to challenge the basis for jurisdiction of the court in this case.

WHEREAS, on December 2, 2021, the Parties entered into the Scheduling Order [Docket No. 21], which was approved by the Court on December 17, 2021 [Docket No. 22];

WHEREAS, on January 18, 2022, the Former Employee Defendants filed the *Motion to Withdraw the Reference for Causes of Action in the Complaint Asserted Against the Former Employee Defendants* [Docket No. 27] (the “Former Employee Defendants’ Motion to Withdraw”);

WHEREAS, on January 21, 2022, the Okada Defendants filed the *Motion of the Okada Parties to Withdraw the Reference* [Docket No. 36] (the “Okada Defendants’ Motion to Withdraw”), and NPA and HCMFA filed the *Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against Defendants* [Docket No. 39] (the “NPA and HCMFA Motion to Withdraw”);

WHEREAS, on January 25, 2022, the Dondero Defendants filed *Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.’s Motion to Withdraw the Reference* [Docket No. 45] (the “Dondero Defendants’ Motion to Withdraw”);

WHEREAS, on January 26, 2022, Defendant Grant James Scott III filed his *Motion to Withdraw the Reference* [Docket No. 50] (the “Scott Motion to Withdraw”) and the CLO Holdco-Related Defendants filed their *Motion to Withdraw the Reference* [Docket No. 59] (the “CLO Holdco-Related Defendants’ Motion to Withdraw” and collectively with the Former Employee Defendants’ Motion to Withdraw, the Okada Defendants’ Motion to Withdraw, the NPA and HCMFA Motion to Withdraw, the Dondero Defendants’ Motion to Withdraw, the Scott Motion to Withdraw, and any forthcoming motions to withdraw the reference, the “Motions to Withdraw”);

WHEREAS, pursuant to the Local Rules, the Litigation Trustee’s time to respond (a) to the Former Employee Defendants’ Motion to Withdraw is on or before February 8; (b) to the

Okada Defendants' Motion to Withdraw and the NPA and HCMFA Motion to Withdraw is on or before February 11; (c) to the Dondero Defendants' Motion to Withdraw is on or before February 15; and (d) to the Scott Motion to Withdraw and the CLO Holdco-Related Defendants' Motion to Withdraw is on or before February 16;

WHEREAS, on January 18, 2022, the Former Employee Defendants filed the *Motion to Stay the Adversary Proceeding Pending Resolution of the Motion to Withdraw the Reference* [Docket No. 30] (the "Stay Motion") and other Defendants joined in the Stay Motion. More specifically, the following Defendants have joined in the Stay Motion:

- a. The Okada Defendants joined in the Stay Motion on January 21, 2022, by filing their *Joinder of the Okada Parties to the Former Employee Defendants' Motion to Stay the Adversary Proceeding Pending Resolution of the Motion to Withdraw the Reference* [Docket No. 38];
- b. NPA and HCMFA joined in the Stay Motion on January 24, 2022, by filing their *Joinder of Defendants NexPoint Advisors LP and Highland Capital Management Fund Advisors LP to the Former Employee Defendants' Motion to Stay the Adversary Proceeding Pending Resolution of the Motion to Withdraw the Reference* [Docket No. 41];
- c. The Dondero Defendants joined in the Stay Motion on January 26, 2022, by filing their *Joinder of the Dondero Defendants to the Former Employee Defendants' Motion to Stay the Adversary Proceeding* [Docket No. 49]; and
- d. Defendant Grant James Scott joined in the Stay Motion on January 26, 2022, by filing his *Joinder of Defendant Grant James Scott to the Former Employee Defendants' Motion to Stay the Adversary Proceeding Pending Resolution of the*

Motion to Withdraw the Reference [Docket No. 52] (collectively, the “Stay Motions”); and

WHEREAS, the aforementioned Defendants have agreed, by separate Stipulation, to extend the Litigation Trustee’s deadline to respond to the Stay Motions to February 8, 2022.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval by the Court it shall be **SO ORDERED**:

1. Any Motions to Withdraw that have not yet been filed shall be filed no later than February 1, 2022;

2. The Litigation Trustee’s response to the Motions to Withdraw shall be filed no later than 12:00 p.m. Central Time on March 4, 2022;

3. Movants’ reply briefs in support of the Motions to Withdraw shall be filed no later than 12:00 p.m. Central Time on March 14, 2022;

4. The status conference on all Motions to Withdraw provided for by Local Rule 5011-1(a) shall be held by this Court on March 17, 2022 at 9:30 a.m. Central Time, after which this Court will issue its report and recommendation under Local Rule 5011-1(b);

5. Any further proceedings on the Motions to Withdraw (if any) shall be scheduled as the Court provides;

6. All remaining deadlines in the Initial Response & Briefing Schedule and the Scheduling Order shall be extended by 30 days; and

7. This Stipulation Regarding Defendants’ Motions To Withdraw is without prejudice to all parties’ rights with respect to the Stay Motions.

Dated: January 31, 2022

Respectfully submitted,

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EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT
ELLINGTON; ISAAC LEVENTON; GRANT JAMES
SCOTT III; FRANK WATERHOUSE; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS, L.P.;
HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT TRUST
AND NANCY DONDERO, AS TRUSTEE OF

Chapter 11

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DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

AMENDED SCHEDULING ORDER

Plaintiff Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Litigation Trustee”), and the Defendants² (together with the Litigation Trustee, the “Parties”), in accordance with the Court’s approval of the *Stipulation Regarding Defendants’ Motions to Withdraw the Reference* [Docket No. 65] (the “Stipulation”), reflected in the *Order Approving Stipulation Regarding Defendants’ Motions to Withdraw the Reference*, hereby submit this *Amended Scheduling Order* (the “Scheduling Order”) that supersedes and replaces the deadlines set forth in the *Order Approving Stipulation and Proposed Initial Response and Briefing Schedule* [Docket No. 23] (the “Initial Response and Briefing Schedule”) and the deadlines set forth in the *Order Approving Stipulation and Proposed Scheduling Order* [Docket No. 22] (the “Original Scheduling Order”). Accordingly, it is **HEREBY ORDERED THAT:**

² Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Stipulation.

1. All remaining deadlines in the Initial Response and Briefing Schedule and the Original Scheduling Order shall be extended by 30 days.

2. Therefore, the Parties shall adhere to the following deadlines, which govern this Adversary Proceeding:

Event	Deadline
Deadline for each Defendant to answer or otherwise move against the Complaint	March 23, 2022
Deadline for the Litigation Trustee to file an opposition to any motion filed by the Defendant(s) in response to the Complaint	July 21, 2022
Deadline for each Defendant to file a reply to the Litigation Trustee's filing in opposition to any motion filed by Defendant(s) in response to the Complaint	September 14, 2022
Substantial completion of fact discovery	September 30, 2022
Start of fact depositions	Earlier of October 31, 2022 or decision on the last outstanding motion to dismiss
Completion of fact depositions	January 30, 2023
Deadline to exchange names and addresses of experts and expert witness reports	March 6, 2023
Deadline to exchange names and addresses of rebuttal experts and rebuttal expert witness reports	May 1, 2023
Expert discovery closes	June 5, 2023
Dispositive motion deadline	July 3, 2023
Deadline to file a response to dispositive motions	August 28, 2023
Deadline to file a reply in support of dispositive motions	September 25, 2023
Last date for hearings on dispositive motions (subject to the Court's schedule)	October 16, 2023
Deadline to exchange expert and witness lists	October 23, 2023
Joint pretrial order deadline	November 27, 2023
Written proposed findings of fact and conclusions of law deadline	November 27, 2023
Docket call	December 11, 2023 at 1:30 pm CT

3. Plaintiff shall be permitted to amend his complaint as a matter of course under Fed. R. Civ. P. 15 and Fed. R. Bankr. P. 7015 on or prior to May 19, 2022. In the event that Plaintiff amends his complaint pursuant to this provision, the Parties will negotiate in good faith regarding

a schedule for answers to and motions to dismiss the amended complaint that is commensurate in scope with the amendment; provided, however, that Defendants shall be afforded at least 45 days to answer or otherwise move against the amended complaint.

4. This Scheduling Order shall only be modified in a writing signed by the Parties or upon entry of an order of the Court entered upon notice to the Parties.

5. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of the Stipulation and this Scheduling Order.

###End of Order###

AGREED AS TO FORM AND SUBSTANCE:

Dated: February 9, 2022

Respectfully submitted,

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